IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2502 OF 2005

Mr.Sayyed Mohammed Nizamoddin Kazi : Petitioner

(Orig. Applicant)

V/s.

Shri Shivputra Babu Erandole & Ors. : Respondents

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Mr.J.Shekhar i/b. J. Shekhar & Co., for the petitioner.

None present for the respondents.

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CORAM : S.A. BOBDE, J.

June 28, 2005.

P.C.:

1. The petitioner has challenged the order of the Addl. Commissioner, Pune Division, by which the learned Addl. Commissioner has reviewed his order passed in revision. As a result of the review, the learned Addl. Commissioner has given effect to the decree of partition passed by the Civil Court. The southern part was to be partitioned equally between the respondents-applicants Shivputra Babu Erandole and others and the petitioner-opponent Sayyad Mohamad Nizmuddin Kazi. In review, the learned Addl. Commissioner found that the north-west corner of this plot is occupied by the buildings constructed by the present

applicant and the plot of the same size is required to be given to the opponent. The learned Addl. Commissioner has, therefore, corrected his earlier order and directed that the area admeasuring 35.5 ares be given to the opponent and the area of 35.5 ares, including the area marked as C.D.E.F. be given to the share of the applicant out of the southern-part marked as A.B.C.D.E.F. of survey no.833/2A. In other words, the learned Addl. Commissioner has held that half-share out of the southern area marked as A.B.C.D.E.F. should be given to the respondent, including theh plot marked on the north-east because the respondent has carried out construction thereon. There is no infirmity, jurisdicitonal or otherwise, pointed out in respect of this order.

2. The learned counsel for the petitioner, however, contended that the learned Addl. Commissioner has unnecessarily reversed his finding relying on mutation entry no.18045. He had earlier observed that it is not in conformity with the civil Court’s decree. In the order by which the earlier order is reviewed, the learned Addl. Commissioner has observed that the measurements before taking mutation entries were done jointly and that the petitioner had not taken any objection at the time of carrying out the measurement nor the petitioner preferred

an appeal to the competent Court i.e. the Superintendent of Land Records. In this view of the matter, there is no error of law on the face of the record warranting interfere.

3. The petition is hereby dismissed.

Sd/-

S.A. BOBDE, J.